IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 419 OF 2000

Dattatraya Vithal Gosavi ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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None for the appellant- accused though appointed.
Mrs. U.V.Kejariwal APP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 23RD SEPTEMBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the Additional Sessions Judge, Kalyan in Sessions Case No. 953 of 1996 under sections 302 of IPC on 17-12-1997 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned learned Prosecutor for the State, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution story as emerges from our reappreciation of the evidence stated briefly is that

at 12.15 a.m. on 13-11-1993 a message was received at the Central Police Station, Ulhasnagar from Central hospital that one Shobha Gosavi is set on fire by her husband and is admitted in the hospital. Accordingly police investigation was started and dying declaration of the victim was recorded, and other evidence was collected. The prosecution has examined as many as 11 witnesses to prove its case against the accused and the learned trial Judge on appreciation of this evidence, came to the conclusion of guilt and convicted the accused/appellant as aforesaid.

4. We have, as already stated, with the assistance of learned APP scrutinised the record as inspite of appointment, no advocate remained present to defend the accused/appellant. The evidence in the state of 11 witnesses will be considered by us and re-appreciated by us to verify whether the findings recorded by the learned trial Judge are based on some principles of law and cogent evidence on record.

5. P.w.1 Bhausaheb Saste says that on the date of incident, between 8.00 p.m. to 10.30 p.m. he was taking meals in his house when he heard shouts from the house of Gosavi. When he came outside the house he saw wife of Gosavi burning. He therefore entered the house of Gosavi and extinguished the fire and put her in Central hospital. However, he says that he did not ask the wife nor she told him, how she got burnt. The

witness was therefore declared hostile, and cross examined by the prosecution. Even if he has declared hostile, he does tell the court that he saw the victim burning and attempted to put out the fire. He was also responsible in taking her to the hospital.

6. P.w.2 Suvarna. She is the daughter of P.w.1. She is also declared hostile as she does not speak of anything else beyond saying that she saw her father extinguishing the fire and saw Shobha burning.

7. P.w.3 is Pushpa. She is real sister of deceased Shobha. On hearing of burning of Shobha she reached to the hospital where she was told by the victim Shobha that her husband poured kerosene on her and put her on fire. In the cross examination she has clearly pointed out that Shobha was not unconscious when she reached to hospital or when she told the witness what happened.

8. P.w.4 Sakhubai is the mother of the victim who reached the hospital on learning about burning of her daughter. On reaching hospital she asked the daughter as to how she got burnt, when she told that her husband beat her, poured kerosene on her person and set her on fire because she refused to give him hot meals. She has also deposed in her cross examination that her daughter Sbobha at the time of her death was seven months old pregnant. She has denied all other suggestions.

9. P.w.5 Prabhakar is the PSI who was attached to Central police station, Ulhasnagar and was on duty at the relevant date. He received telephone message from Central hospital, Ulhasnagar that one Shobha is set on fire of pouring kerosene by her husband and is admitted in the hospital. Witness therefore went to the hospital where he saw Hilda Das, Special Executive Magistrate, recording the statement of the victim. He therefore waited outside the hospital. After recording of the statement by the SEM the witness went to the victim and asked her as to what happened. On that the victim told the witness that her husband put her on fire and the reason for doing so, was that she was not feeling well and therefore she refused to get hot meals to her husband. He recorded this statement and proved it and exhibited as Exh. 17. A perusal of Exh.17 will show that she fulfils the requirement of dying declaration which has the endorsement by the medical officer, stating that the patient is conscious and is in a well condition. In this statement she has very categorically stated how her husband beat her and on her refusal to get the hot meals, poured kerosene on her body and put her on fire. She also candidly stated that when she heavily burnt and shouting, her husband and others tried to drowse the fire and took her to Central hospital.

10. P.w.6 is Hilda Das who was Special Executive

Magistrate, who recorded the statement of the victim as required by law. She has recorded the said statement in question and answer form and has adopted to all norms prescribed in the Criminal Manual for the purpose of recording dying declaration. She was there at the instance of police and she has ascertained before recording of the statement from the doctor the condition of the patient. She was told that the patient is in a position to talk and is generally conscious. She therefore put certain preliminary questions to the patient and asked her how she was burnt. She has deposed that the witness specifically told her that her husband poured kerosene on the victim and put her on fire. Then the SEM states that the doctor was through out with the patient when the statement was being recorded and doctor has put his signature on the same. He proves the dying declaration which was recorded by her. She has categorically stated that no other person except the Executive Magistrate and the doctor and the constable was present when the declaration was being recorded. She has proved Exh.21 as the dying declaration recorded by her. As we have pointed out, this declaration is recorded as per the procedure prescribed in question and answer form. She has answered the first six questions properly and then 7th question is put to her as to whether she has any physical or mental trouble and if so from whom. She replied specifically that she has trouble from her husband. Then she was asked as to how

she got burnt and the reply she has stated that her husband quarrelled with her and poured kerosene on her and put her on fire. Then she says that her husband and neighbours tried to drowse the fire and admitted her in the Central hospital. She also refused that at the time when the incident took place she was pregnant and was in 4th month. This declaration has the signature of SEM and certified by the medical officer saying that the patient is conscious. It will thus be seen that the P.ws. 5 and 6 have both proved the dying declaration recorded by them. There is no material difference between the two dying declarations. The victim has been consistently stated in both the dying declarations that it was the husband who put her on fire and later on, tried to drowse the fire and that there was quarrel between the two was also stated in both the dying declaration. In our opinion, there is no error committed by the trial Judge in accepting the dying declarations as correct. His reliance on these dying declarations along with other entrinzic evidence which corroborates the statement of deceased made in these statement and he was therefore right in convicting the accused/appellant as aforesaid.

12. As we have observed already, P.w.7 is Dr. Jyoti who deposed before the court that she was present when the statement was recorded by the SEM and the victim was conscious. P.w.8 Dr. Ajay Gavhale conducted post martum and proved the homicidal death.

13. P.w.9 is Pinky who is very important witness who, in our opinion, clinches the matter. She is the daughter of the deceased and the accused. She is the unfortunate eye witness to the incident. She says that she was sleeping in the house, when she heard shouts of quarrel and was awakened. According to her, the quarrel was between her father and mother and she saw her father pouring kerosene on her mother and set her on fire. She therefore started shouting. She then went to the house of neighbour who came and extinguished the fire by wrapping chadder around her mother. This eye witness is dully corroborated by the neighbour whom she says was responsible for rescuing her mother. She is consistent with the dying declaration as made by the victim, who stated that the victim was burnt by her husband.

14. It will thus be seen that it is the eye witness account of what happened, as given by P.w.9, duly supported by the dying declarations made by the victim and duly recorded by P.ws. 5 and 6 which also received support on material particulars from other attending witnesses and there is therefore no reason why the order impugned should be interfered with. In the result therefore, the appeal fails and it is dismissed.

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